

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Matthew Prow,

Civil No. 15-3857 (PAM/SER)

Plaintiff,

v.

REPORT & RECOMMENDATION

Tom Roy, John King, Sandra O'Hara,
Steve Hammer, Mary McComb, Carol
Kripner, Regina Stepney, Lieutenant Lindell,
and Sergeant Hillyard,

Defendants.

Matthew Prow, *pro se*, 223727, Minnesota Correctional Facility–Stillwater, Bayport, Minnesota.

Margaret E. Jacot, Esq., Minnesota Attorney General's Office, St. Paul, Minnesota, for Defendants.

STEVEN E. RAU, United States Magistrate Judge

This matter comes before the Court on Plaintiff Matthew Prow's ("Prow") Motion for Summary Judgment [Doc. No. 62] and Defendants Roy, King, O'Hara, Hammer, McComb, Krippner, Stepney, Lindell, and Hillyard's Motion for Extension [Doc. No. 67]. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1. For the reasons stated below, the Court recommends that the Motion for Summary Judgment be denied without prejudice and the Motion for Extension be denied as moot.

Prow filed his Motion for Summary Judgment on July 5, 2016, and Defendants moved to extend the deadline for their response on July 25, 2016.¹ In support of their Motion to Extend, Defendants argue discovery is ongoing. *See generally* (Aff. of Margaret Jacot) [Doc. No. 68]. Defendants proposed to Prow that he agree to allow Defendants until November 4, 2016, to respond to his Motion for Summary Judgment to give the parties time to complete discovery.² (*Id.* ¶ 7). Defendants also advised Prow that they intend to move for summary judgment and it would make sense for the Court to consider both motions for summary judgment at the same time. (*Id.*). Prow declined to agree to the extension and stated that he may need to seek additional discovery after reviewing Defendants' motion for summary judgment. (*Id.* ¶ 8).

The Court currently has two motions under advisement: Prow's Motion to Compel Discovery [Doc. No. 38] and Prow's Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 43]. The Court finds that in order to secure the "just, speedy, and inexpensive determination" of this action, the Court should consider the parties' motions for summary judgment at the same time, and following the close of discovery. *See* Fed. R. Civ. P. 1.

The Court will, by separate Order and Report and Recommendation, issue rulings on the pending Motion to Compel and Motion for Temporary Restraining Order and Preliminary Injunction. Thereafter, the Court will issue a briefing schedule for the parties' cross-motions for summary judgment. Consistent with the typical progression of a civil case and because parties moving for summary judgment must cite to materials in the record to support their positions, summary judgment motions will be filed after the close of discovery. *See* Fed. R. Civ. P. 56(c).

¹ Although Prow signed his Motion for Summary Judgment on June 30, 2016, it was not docketed until July 5, 2016. The difference in these dates is not material to this Report and Recommendation.

² Discovery closes on November 1, 2016. (Pretrial Scheduling Order) [Doc. No. 28 at ¶ 1].

This scheduling adjustment will allow the Court to consider comprehensively the merits of this case, rather than doing so in a piecemeal fashion.

Therefore, consistent with the foregoing, the Court recommends that Prow's Motion for Summary Judgment be dismissed without prejudice. Prow may file a new motion for summary judgment consistent with the Court's forthcoming briefing schedule, which will be entered separately and after the Court's ruling on the Motion to Compel and Motion for Temporary Restraining Order and Preliminary Injunction. Correspondingly, the Court recommends denying Defendants' Motion for Extension as moot.³

Based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Plaintiff Matthew Prow's Motion for Summary Judgment [Doc. No. 62] be **DENIED without prejudice**; and
2. Defendants Roy, King, O'Hara, Hammer, McComb, Krippner, Stepney, Lindell, and Hillyard's Motion for Extension [Doc. No. 67] be **DENIED as moot**.

Dated: August 1, 2016

s/Steven E. Rau
STEVEN E. RAU
United States Magistrate Judge

³ This Report and Recommendation will not be adopted in time for Defendants to meet their August 2, 2016 deadline to respond to Prow's Motion for Summary Judgment. While this Report and Recommendation is pending, Defendants are not required to respond to Defendants' Motion for Summary Judgment.

Notice

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under D. Minn. LR 72.2(b)(1) “a party may file and serve specific written objections to a magistrate judge’s proposed findings and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after objections are filed; or (2) from the date a timely response is filed.